



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 9433790

Date: SEPT. 24, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a mechanical engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for the EB-2 classification as a member of the professions holding an advanced degree and for a national interest waiver under the *Dhanasar* framework.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will remand the matter to the Director for further action and consideration.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including,

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show an individual is a professional holding an advanced degree, the petition must be accompanied by "[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, the Petitioner may present "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B). The Director's decision did not analyze the Petitioner's mechanical engineering degree from [REDACTED] or his subsequent experience in his specialty to make a finding as to whether he qualifies as a member of the professions holding an advanced degree.

B. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

1. Substantial Merit and National Importance of the Proposed Endeavor

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that he seeks to work as a "Senior Mechanical Engineer" for [REDACTED], "a Florida-based company specializing in the provision of mechanical engineering services pertaining to the [REDACTED] processing sectors." He asserted that his proposed endeavor involves advising clients in the aforementioned sectors as well as in [REDACTED] [REDACTED] for industrial settings. The Petitioner further stated that his undertaking is aimed at "the effective

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

execution and management” of []’s mechanical engineering projects. In addition, the Petitioner explained that his proposed work includes “support of []’s customers through consultation services, wherein he will impart his invaluable expertise and technological know-how on a variety of topics and projects requiring implementation of complex mechanical engineering concepts and tools.”

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work.⁴ The Director’s decision, however, did not render a determination as to whether the Petitioner satisfies prong one of the *Dhanasar* analytical framework.

2. Well Positioned to Advance the Proposed Endeavor

As evidence for *Dhanasar*’s second prong, the Petitioner offered documentation of his academic credentials, professional training certificates, and business plan for []. He also provided recommendation letters discussing his work experience and interest in his company’s services. While the Director’s decision briefly mentioned the recommendation letters and training certificates, it did not include a proper analysis of the content of the letters or a sufficient discussion of the evidence presented under this prong of the *Dhanasar* framework.

3. Balancing Factors to Determine Waiver’s Benefit to the United States

With respect to prong three of the *Dhanasar* precedent decision, the Petitioner claimed that he is eligible for a waiver due to the benefit his occupation provides to a variety of U.S. industries, a projected shortage of engineers in our country, and his experience and expertise in the mechanical engineering field. The Director’s decision listed five factors that USCIS may consider in determining whether, on balance, it would be beneficial to the United States to waive the requirement of a job offer and thus of a labor certification, but did not evaluate the Petitioner’s arguments and evidence as they relate to these factors. Instead, the Director’s decision improperly concluded that because the Petitioner had not satisfied the second prong of the *Dhanasar* framework, he therefore did not meet prong three. Without a proper evaluation of the evidence in accordance with the factors identified in the *Dhanasar* precedent decision, the Director’s determination regarding prong three was in error.

III. CONCLUSION

We are therefore remanding the petition for the Director to consider whether the Petitioner has satisfied the eligibility requirements for classification as member of the professions holding an advanced degree. In addition, the Director should properly apply all three prongs of the *Dhanasar* analytical

⁴ Although the Petitioner’s statements reflect his intention to offer valuable mechanical engineering consulting services to his company’s clients, the Director should consider whether the Petitioner has presented sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. In the instant case, the Director should consider whether the record shows that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his company and its future clients to impact the [] industries more broadly at a level commensurate with national importance. Furthermore, the Director should consider whether the record demonstrates that the specific endeavor the Petitioner proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation.

framework to make a determination as to whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision which, if adverse, shall be certified to us for review.